

Appl. No. 10/634,417  
Response Dated June 28, 2007  
Reply to Office Action of March 28, 2007

Docket No.: 1020.P17472  
Examiner: Chery, Dady  
TC/A.U. 2616

**Amendments to the Drawings:**

The attached sheet of drawings includes changes to FIG. 2. This sheet, which includes FIG. 2, replaces the original sheet including FIG. 2. In FIG. 2, previously omitted descriptive label '200' has been added.

Attachment: Replacement Sheet

## **REMARKS**

### **Specification**

In the specification, a brief summary of the invention section has been added. Applicant respectfully submits that the new section places the specification in conformance with the recommended guidelines suggested for use in the Office Action. Therefore, withdraw of the objection to the specification is respectfully requested.

Moreover, in the specification, the paragraph [0017] has been amended to correct minor editorial problems.

### **Figures**

In amended FIG. 2, the previously omitted descriptive label '200' has been added. Furthermore, Applicant respectfully requests withdraw of the objection to FIG. 1 based on the above recited amendments to the specification. In particular, paragraph [0017] of the specification has been amended to recite "wireless transceiver 110" as correctly depicted in FIG. 1.

### **Summary**

Claims 1-21 stand in this application. Claims 1, 2, 3 and 15 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

**Claim Objections**

Claims 2, 3 and 15 have been objected to because of claim informalities.

Applicant respectfully submits that claims 2, 3 and 15 have been amended in accordance with the instructions in the Office Action. Therefore, removal of the claim objections with respect to claims 2, 3 and 15 is respectfully requested.

**35 U.S.C. § 112**

Claim 2 has been rejected under 35 U.S.C. § 112 for not particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. Applicant respectfully traverses the rejection based on the above amendments. These claims have been amended in accordance with the Office Action, and removal of this rejection is respectfully requested. Applicant further submits that the above amendments are made to overcome a § 112 rejection and are not made to overcome the cited references. Accordingly, these amendments should not be construed in a limiting manner.

**35 U.S.C. § 102**

At page 5, paragraph 8 of the Office Action claims 1, 4 and 5 stand rejected under 35 U.S.C. § 102 as being anticipated by United States Patent Number (USPN) 7,099,346 to Kanterakis ("Kanterakis"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 2, 3 and 15 in order to facilitate prosecution on the merits.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Kanterakis fails to teach each and every element recited in claims 1, 4 and 5 and thus they define over Kanterakis. For example, with respect to amended claim 1, Kanterakis fails to teach, among other things, the following language:

initiating a channel access for at least one of a plurality of  
queues....

As correctly noted in the Office Action at least on pages 8 and 10-13, Kanterakis does not disclose a plurality of queues.

According to the Office Action, the missing language is taught by USPN 5,179,557 to Kudo (“Kudo”). Applicant respectfully submits that Kudo is addressed below with respect to the § 103 rejection. Consequently, Applicant respectfully submits that Kanterakis fails to disclose all the elements or features of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 4 and 5, which depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Kanterakis.

**35 U.S.C. § 103**

At page 6, paragraph 11 of the Office Action claims 2, 3 and 6-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kanterakis in view of USPN 5,179,557 to Kudo (“Kudo”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 2, 3 and 6-21. Therefore claims 2, 3 and 6-21 define over Kanterakis and Kudo whether taken alone or in combination. For example, claim 6 recites the following language, in relevant part:

selecting a transmit queue from a group of eligible transmit queues for transmission....

As correctly noted in the Office Action, the above-recited language is not disclosed by Kanterakis. According to the Office Action, the missing language is disclosed by Kudo at Column 5, lines 23-62. Applicant respectfully disagrees.

Applicant respectfully submits that Kudo fails to teach, suggest or disclose the missing language. Kudo at the given cite, in relevant part, states:

there is provided a packet communication system which sequentially receives packets each made up of a predetermined unit data, arranges the packets to form a packet queue, selects any one of the packets in the packet queue and sequentially transmits the selected packet; and which system comprises timer means for starting its time measuring operation each time a packet is received and arranged in the packet queue to measure a stay time of the received packet staying in the packet queue, and selection means for selecting one of the packets in the packet queue on the basis of the stay time of each packet.

By way of contrast, the claimed subject matter teaches “selecting a transmit queue from a group of eligible transmit queues for transmission.”

Applicant respectfully submits that the above recited language of Kudo clearly teaches the use of only one queue. In contrast, Applicant respectfully submits that the claimed subject matter clearly teaches the use of a plurality transmit queues. Therefore, Kudo fails to disclose, teach or suggest the missing language. Consequently, Kanterakis and Kudo, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 6.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example.

Accordingly, removal of the obviousness rejection with respect to claim 6 is respectfully requested. Claims 7-16 also are non-obvious and patentable over Kanterakis and Kudo, taken alone or in combination, at least on the basis of their dependency from claim 6. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Independent claims 1, 17 and 19-21 recite features similar to those recited in claim 6. Therefore, Applicant respectfully submits that claims 1, 17 and 19-21 are not obvious and are patentable over Kanterakis and Kudo for reasons analogous to those presented with respect to claim 6. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 1, 17 and 19-21. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 2 and 3 that depend from claim 1, and therefore contain additional features that further distinguish these claims from Kanterakis and Kudo.

For at least the reasons given above, claims 2, 3 and 6-21 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 2, 3 and 6-21 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be

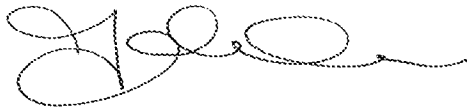
necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-21 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC

A handwritten signature in black ink, appearing to read 'John F. Kacvinsky', with a long horizontal line extending to the right.

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John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

Dated: June 28, 2007

4500 Brooktree Road, Suite 102  
Wexford, PA 15090  
(724) 933-5529